

**Memphis and Shelby County
Metropolitan Government Charter Commission**

**Minutes
April 1, 2010
4:00 p.m.**

Commission members present:

Julie Ellis, Chairman
Andre Fowlkes, Vice Chairman
Lou Etta Burkins, Secretary/Treasurer
J. W. Gibson
Mayor Richard Hodges
Chris Patterson
Carmen Sandoval
Richard Smith
Jim Strickland
Rufus Washington

Commission members absent:

Damon Griffin
Linda Kerley
Billy Orgel
Dr. Randolph Meade Walker
Rev. Ralph White

Others present:

Bill Dries, The Daily News
Brian Kuhn, Co. Attorney
Matt Kuhn, Asst. - County Mayor
Kelly Rayne, Asst. - Memphis Mayor
Bruce Smith-MATA, GC

Fred Jones, MLGW
Carter Gray, Asst. County Attorney
Stephen Wirls, Rhodes College
Kim Hackney, Sheriff's Office

The meeting was called to order after a moment of silence.

Chairman Ellis called the roll and announced there was a quorum.

Approval of Minutes: Commissioner Strickland moved approval of the Minutes of the March 18, 2010, meeting. Commissioner Washington seconded. All Commissioners voted aye. The Minutes of March 18, 2010, are approved.

Administrative Update:

Mr. Matt Kuhn: Commissioners should have a list of the task force meetings scheduled for next week. All of the meetings have been sunshined. The Finance and Accountability Task Force has broken into four separate sub-groups and two of those sub-groups will meet next week. Packets have been distributed to all Charter Commissioners which include copies of minutes from the Ethics Task Force and reports from Task Force 1 – Metro Charter Commission, and the Environmental Infrastructure Memorandum of Understanding. Anticipate that recommendations for a budget will be

provided next meeting which will include paper and mailing expenses and possibly snacks and drinks for meetings. Conference calls with some consolidated governments will be arranged in near future. Mr. Kuhn will look into the possibility of Skype before next meeting.

Brian Kuhn, County Attorney: No updates.

Mr. Payne, Asst. City Attorney: No updates.

Mr. Kuhn passed out a sign-up sheet for persons attending the Charter Commission Meeting that included space for an email address so their names could be placed on the distribution list for up-coming charter meetings.

Chairman Ellis: The Louisville administration suggested that the Mayor and Vice Mayor do a Skype call with the commission possibly the first two weeks in May.

Name that Government Update

Comm. Fowlkes: Five or six weeks ago there were suggested three names from which to choose and a fourth variable with a geographical or historical name such as the Wolf River Metropolitan Charter. Currently the majority of respondents are in favor of Memphis Metropolitan Government. The second favorite was Memphis/Shelby Metropolitan Government. Comm. Fowlkes suggested the "Name that Government" issue be extended for another couple of weeks. Rebuild Government is also going to seek data for the naming convention and expects to have input within the next few days.

Comm. Fowlkes advised that when the Commission first started meeting, there was some discussing on utilizing social media fronts. Commissioner Fowlkes expressed some concern about the use Facebook, etc. because there was no way to monitor.

Comm. Smith will assist in this effort.

Resume Amenities and Public Betterment Report

Comm. Fowlkes: There were five issues at the last meeting – At this point, the Commission is not trying to establish what will be final in the charter document. These are preliminary recommendations. The Commission is trying to provide a conceptual idea for the writing committee to start drawing up the document. There may be a reason to change things depending upon future task force recommendations.

Comm. Patterson: Chart with Amenities – areas listed that are tagged either general or urban – is that who is paying for them now? Will it be this specific in the charter that City Beautiful or Historical Preservation will be either general or urban?

Chairman Ellis: I think the charter – at least all of the charters we have looked at will say Parks and Recreation are a blank. If we have to be that specific, I think we have to await the Finance Committee's efforts. We do not want the public to think that we are adding to the city departments as we are making these decisions for the charter and certainly not at \$120,000 for a director. We are drawing an organization chart for a new government. This is really preliminary thinking, the task force thinking on how services might be organized in the new government. It is very important for everyone to know that this is a first-cut, trying to get an organization and thinking about how best delivery of services can be done under a consolidated government. It is not a proposal that we add two new departments to the City of Memphis. That is not our job. All of our proposals as to general and urban is the best thinking of the task force at this point in time. It may be where it is today; it may be where it should be in the future and I think that is literally our charge, but it will also have to be driven by the finance committee and weaving that in, looking at the two current government budgets and what kind of revenue sources there are, as well as how it would be impacting the six cities as well as the unincorporated areas and the citizens of the former city of Memphis.

Comm. Fowlkes: One good piece of feedback was concerning the Landmarks Commission and possibly removing that out of the equation. Currently Landmarks is under Planning and Development; deals with zoning and may not be applicable to public betterment and amenities. The Agricultural Extension Services Board was not included in the public betterment and amenities. It primarily deals with the education of Memphians using agriculture, the environment and the natural resources. That board might be a good fit when looking at parks and community enhancement, including park services, Shelby Farms and Memphis City Beautiful.

With regard to the two departments in the preliminary recommendation -- because the budget for the library would dwarf the other commissions that fall under the Civilian Enhancement Advisory Board -- Film & Television, Music Commission, etc., maybe there should not be a Civilian Enhancement Board or maybe the library should be stripped out and be on its own. Even though the library's budget may dwarf the others, does that mean that we do not need a department to make them proactive and innovative? Should the library be a part of the Civilian Enhancement Board or stand on its own and left to the metro legislative body?

Comm. Strickland: In glancing through the task force report, it looked like two departments to be created; if each task force creates two departments, there is some concern that there will be more departments than exist. Comm. Strickland believes it is best to just go with Parks and Community Enhancement, and not do a Civilian Enhancement Department and give the mayor and the legislative body the power to move it under whatever department or division it would best fit. Right now, Neighborhood Services is kind of a catchall. In City Government there are currently 13 divisions. Believes this is too many. The City Charter currently only requires five divisions.

Comm. Smith: Once all of the recommendations are on the table, maybe then the Commission can look at all departments and can maybe combine some of them.

Comm. Hodges: Will the new library system be just metro or would it be county wide?

Comm. Fowlkes: The preliminary recommendation is to have it where the current municipalities who are running their own libraries would continue to exist. It is preliminarily set up for the libraries to be an urban service. That way the municipalities would not have to pay twice. The Commission will have to determine whether or not to create a department or leave it to the new government to organize it. Without it being stated specifically in the charter, will the metro government be able to connect the dots and organize government a little bit better?

Comm. Burkins: Suggest for purpose of starting to draft the charter, that the Commission leave the recommendation as it is right now, and maybe modify later once the charter document is closer to finalization.

Comm. Smith agrees.

Chairman Ellis: Metro Charlotte, North Carolina, has 14 business units, so the numbers should be something the Commission would look at, but also how the numbers are managed and who manages them.

Comm. Washington: Concerned that a lot of people believe this charter exercise is built around economies of scale, saving money. The Commission should be careful about adding departments as he hears all the time about government being top heavy.

Comm. Smith: Commission needs to balance the efficiencies to be gained by some departments. Some of the consolidated governments have lots of departments. The metro government should not have more departments than the City has currently.

Chairman Ellis: The departments are reflective of services, at which the task forces are looking. This is an exercise that is worthy of the commission's effort to look at what the services are and possibly remodeling how they are governed.

Comm. Fowlkes: The current situation has three different possibilities: 1) Breaking it out to two different departments, civilian enhancement and parks and community enhancement; 2) Keep the parks and community enhancement and not have the civilian enhancement advisory board; 3) Have the parks and community enhancement and instead of it being civilian enhancement, it would be library and civilian enhancement.

Chairman Ellis: Could you put two proposed departments in one? We would not want to drive a department of metro government by one urban function; perhaps a library commission, which was the suggestion of the Mayor of Lakeland, might act metro-wide.

Comm. Fowlkes: Concerned that there should be limit to how many commissions and authorities, etc. you can lump together. There should maybe be an advisory board and then still continuing to have working boards or working commissions that deal with the day to day.

Comm. Patterson: Are boards non-paid positions? Possibly should put that in the charter.

Chairman Ellis: Send it to the writing committee with either one or two departments for them to look at, with the Public Amenities Task Force advising as to how any private partnership would support both departments.

Comm. Fowlkes: It is better to give the writing committee one or the other alternative rather than two scenarios. If the main reason that some members are opposed to creating the Civilian Enhancement Department is because of the creation of more departments and having at the end so many new departments, remember we are pulling from the departments that are current; maybe some of them will be eliminated; go ahead and start with two and then as commission progresses, see if some are eliminated.

Comm. Sandoval: Recommends move forward with two new departments and once all task forces have reported out, some will probably be combined.

Comm. Fowlkes made motion to approve for the writing committee only to begin drawing up the legalese for the creation of the two departments recommended by the public amenities and betterment task force. Comm. Burkins seconds. All Commissioners vote aye.

Comm. Fowlkes: Comm. Walker had some concern with making the library an urban or general service. The preliminary recommendation was to make it an urban service because some municipalities are paying for their own libraries. If the libraries were a general service, then they would pay twice -- one through metro and then one through the municipality. Should the libraries be general or urban services?

Comm. Smith suggested the libraries be urban special with the ability to opt in to the metro libraries.

Chairman Ellis: Commission should also hear what the suburban mayors are thinking of that particular issue and the recommendation of the Lakeland mayor.

Comm. Hodges: "On that particular issue, we would be open to anything if it would save us money."

Comm. Fowlkes: If the municipalities sought to continue the libraries as they exist today, they would be able to do so if the option was there to, at some point, come back

in. The question has been asked that if the Commission were to make it a general service under the metro charter, would the municipalities get a tax credit?

Chairman Ellis: Is the sense of the Commission to take Comm. Fowlkes' recommendation with respect to the libraries? Yes.

Comm. Fowlkes: The preliminary recommendation is for it to be urban. Most are in agreement, but there was an objection to making it general.

Chairman Ellis: I think we approve it and it will be moved to the writing committee. It is going to be studied by several different committees.

Report on Annexation Options

Comm. Strickland: The task force talked about general options but have not voted. Pursuant to state law, all cities in Shelby County, including Memphis, have entered into a written agreement with respect to what non-annexed areas would be in which city. Ms. Rayne gave members a map of those areas, showing what parts were in the Memphis annexation areas; the Collierville annexation area, etc. If consolidation goes forward, what happens to annexation? There are several different options that the task force talked about. 1) Incorporate the annexation agreement into the charter. 2) Adopt the annexation agreement but put in conditions to be met before annexation could occur such as an agreement to build a certain number of parks or provide additional police officers. 3) Adopt the agreement as part of the charter, but require that people who are not yet annexed to vote to approve whether they want to be annexed. The third choice is the recommendation of Comm. Strickland. If citizens vote for annexation, you get buy-in. 4) Don't mention annexation in the metro charter (though it probably is not a good option).

Comm. Washington: Likes notion of giving citizens a voice in deciding whether to annex. He understands that when authority was given to municipalities to annex territory, they were given the option to either do it by referendum or resolution. In past, Memphis has generally done its annexations by resolution.

Comm. Gibson's question was whether the consolidated government could make the decision in relation to annexation. Believes can do it for the Memphis -- urban services district; but question is whether it could be done to the other municipalities.

Comm. Hodges: If annexation areas are left as is, what would be the limits of metro government?

Comm. Strickland: Current city limits of Memphis; that would be the urban services district.

Comm. Patterson: Example -- Millington would still have their reserve. If you live in the reserve, you can only ever be annexed by Millington.

Comm. Hodges: Who would provide them services?

Comm. Patterson: It would be the general services district right now.

Comm. Strickland: The metro government would provide those services just like the County is doing right now.

Comm. Patterson: Since the other municipalities are not considering adopting this and merging, that referendum idea would apply only to Memphis. Millington would retain their current reserve areas.

Comm. Washington: Option 1 -- leave the agreements like they are. Write the charter and leave the agreements as they are.

Comm. Strickland's preference is Option 3. And the municipalities' preference is Option 1, so as to keep their territories they have.

Comm. Burkins: Requests legal opinion as to whether Option 3 is legal.

Chairman Ellis: Option 3 is similar to what is called Florida Plan where it is required that voters decide. The Commission would have to look into the legality and get opinions from county and city attorney and perhaps an annexation lawyer, maybe from the state. After the task force makes a recommendation, then the Commission can ask for a legal opinion.

Comm. Gibson: The task force concurs on Option 3, if the metro government has the authority to do so. May need some input from municipal representatives.

Brian Kuhn, County Attorney, sent copies of his opinion regarding the issue to the municipalities but did not yet get a response.

Chairman Ellis: If Commission receives no feedback from the municipalities, then the Commission should move forward.

Comm. Patterson: It is a separate question to say what can you do, rather than is this one thing allowable under state law? Or is there anything that prohibits this under state law?

Chairman Ellis: From the chair's perspective, I would like a succinct question from the task force before it is referred to any counsel.

Comm. Washington: Option 3 -- are we saying that the agreements made several years ago will be included in the charter; however, before any territory is annexed, we would have the citizens vote on it?

Comm. Patterson: Yes.

Comm. Washington: So the agreements would not stand as they are today?

Comm. Patterson: Correct.

Chairman Ellis: The commission will await specific guidance from the task force before requesting a legal opinion.

Transportation and Infrastructure report

Comm. Smith: Task Force 1 -- Transportation/Utilities

Members: Comm. Smith, Comm. Ellis and Comm. Griffin

Administrative Departments:

These recommendations may need to change as other task forces report out.

1. Department of Environmental Management and Public Works.

This department would include management of air and water quality, land resource preservation, waste management, storm water systems, ecosystems asset management, sewers, collection and disposal of garbage and waste.

Suggested Administrative Departments of Metro Government

1. Suggested Independent Departments to operate across metro
2. Department of Metro Inspector General
3. Department of Strategic Planning, Budget, Quality, Innovation
4. Department of Information Technology and Utilization.

Recommended general provisions:

- 1) Advisory boards to be created either by charter or at request of mayor and confirmed by council.
- 2) Task forces created by either mayor or council.
- 3) Councils, associations to be created by mayor or by council.
- 4) Authorities to be created by metro government pursuant to charter.

Suggested Administrative Departments of Metro Government

1. Department of Metro Transportation

2. Department of Environmental

Recommended agencies of metro government

Boards and Commissions

1. Charter Revision Commission
2. Multimodal Transportation Commission
3. Sustainable Metro Commission

Authorities

- 1) Airport Authority
- 2) Port Authority
- 3) MATA
- 4) MLGW

Agencies

1. Ethics Commission
2. Regulatory and Competition Advisory Commission
3. Greater Memphis Communities Commission

Environment - general/special
Metro transportation – general
Airport Authority – general
Port Authority- general
MLGW – general
MATA - urban/special

In response to Comm. Strickland regarding multimodal and sustaining advisory boards -
- advisory boards are unpaid positions.

Comm. Strickland: Recommends Commission include statutory language in the charter regarding MLGW. Can address in charter that MLGW cannot be sold without a referendum.

Comm. Strickland made motion to include a provision that MLGW cannot be sold without referendum, seconded by Comm. Patterson. All Commissioners voted aye.

Some concern expressed that suburban citizens not currently represented on MLGW board. Skip Jones, attorney for MLGW, says they are working on language. He is working with the Commission's charter writers to create the appropriate language.

Comm. Strickland expressed some concern that neither the Airport Authority (state entity - their structure expressed specifically in a State Act) nor MLGW have public input.

Chairman Ellis: Believes certain agencies of metro government should have budget approval and operate as businesses and all be subject to metro government audit. State created powers of Authorities should be respected.

Comm. Burkins expressed some concern about representation on MLGW and Airport boards to ensure they represent the entire Metro government.

Chairman Ellis: Last week the Chair went to Nashville and met with Comm. Nicely, one of the founders of consolidation in Nashville. He is also the Tennessee Commissioner of Transportation. Also met with Ed Cole who has been Nicely's number two and Eric Cole, a member of the Nashville Council. All are very interested in helping us in understanding the Nashville model and how they worked with their communities and their tax structure. Commissioner Nicely was very interested in our model proposal -- our task force recommendations creating a department of transportation because he feels very strongly that if we do not speak with one voice on our transportation modes for federal or state funding, we are not going to be adept at receiving nor managing those federal and state flow of funds. He was very instrumental in us seeing Charlotte's model which is in your handout as an example.

Comm. Smith believes these two departments are too large in scope to combine under one director.

Comm. Strickland -- concern that commission is locking in the number and name and authority of these departments for 10 years which gives the mayor very little authority. Libraries may disappear, with the result being the mayor locked in to having a department that has no use. Charter should not be too specific, but give mayor some flexibility. Comm. Smith agrees.

Chairman Ellis: Colonel Fox provided information from the county on environmental infrastructure memorandums of understanding that all of the mayors have executed and which address a real consolidated future of how we manage our environment with respect to sewers and waste water.

Questions from suburban mayors:

MATA is recommended to be both urban and special

Neither Memphis or Shelby County subsidizes Airport but does provide approximately \$30 billion in economic benefit to the metro area (2008).

MLGW's excess revenues will not go into metro's general fund - rates to be lowered if there is excess funds.

Under the task force's current recommendations, engineering, public works functions within Metro are to be housed in a metro environmental management and public works

department. Adequate sewer service will be determined by the strategic planning process.

Waste collection - urban or general services? Task force does not recommend city collection.

Comm. Smith made motion to adopt recommendations, seconded by Comm. Ellis, as amended. All vote aye.

Items of Discussion for Next Meeting

Chairman Ellis: Comm. Meade Walker really apologized. When he took first task force on ethics on April 1, he forgot he was conducting church services, but he has provided ethics code for review -- will present at next meeting.

Comm. Washington will present the public safety task force report at next meeting.

Professor Wirls, Rhodes College has given us an outline of what is in the city's ethics code.

Comm. Strickland will give the legislative task force report.

Comments from the Public and Organizations

Mayor McDonald, Bartlett: Concern about language presented by Comm. Smith on the idea of appointed by mayor and approved by the council as the sole languages for many of the boards and commissions because it does not guarantee any voice for the people in the general services area. What you have in other communities, other areas, are some minimal number of people to be represented by the general services area outside of the urban and that does guarantee that ability. Encourage the commission to consider the possibility of that language saying, appointed by the mayor, approved by the council, to include at least some minimum number of people from the general services area so that there is that assurance that we would have a voice which we have not had with MLGW, yet we are the highest paying percentage of the MLGW budget outside of commercial. We do want you to consider that. As to question as to whether or not we would be in agreement on Option 3 of having required referendum for annexation, Germantown and Bartlett has some strong questions about that because when you look at planning, when you plan to annex these areas and provide them services and you build your infrastructure so that it leads in that direction, to then have it be referendum versus resolution, it will change -- it will have a dramatic impact on ability to do planning, whether that is Memphis or whether that is Bartlett or any other community because you won't know whether or not you are going to be going in that direction until you have the vote, so that means you cannot plan ahead. Lakeland did do their annexation by referendum, their latest annexation was by referendum, so there

is precedent for that. There are times when that makes sense, where they need services that you cannot provide. We are in a situation like that where some of our area close to us will require sewerage and it will take \$10 to \$20 million to do that and they want our police and they want our fire, but we cannot afford to set ourselves in a limited time frame on the sewer because we just don't have the funds for that in the current economy. If you go to referendum, you can do it and they can accept the services that are available right now and then get those other services at a later date, so there are advantages sometimes to the referendum.

Comm. Smith: In the recommendations, we mentioned that these boards need to be representative of the metro area and the general and urban services area will vote on their council members, so they would have representation in the form of the council that has to approve the mayor's appointments and on top of that, they would also vote for the mayor.

Mayor McDonald: The fact that you are building a strong mayor form of government, which Bartlett is, I know that as the mayor of Bartlett, I can bring forward people to fill positions on boards. The council can vote me down every time, but I keep bringing the names I want to bring. Now, if we have the optimum, angelic mayor elected, then that person is fair and reasonable about all things, but you don't always get that. So, you have to write this in case you don't get one of those elected.

Comm. Smith: By law, the people on the board have to be representative of the metro area. You cannot have everybody from one district or just from the urban services district and that is in the recommendations. If there is more specific language we can put in there to protect that, we would welcome any suggestions.

Mayor McDonald: That is what I am recommending is more specific language that would require a certain number of those to be from the general services area, that way you are assured that while it would still be the mayor making those recommendations, some of them, just like this Commission -- this commission is a perfect example where Mayor Wharton, in essence, was able to appoint all of you. But he was able to do that by bringing some people who live in what would be the general services area to the table, at least three or four of you are in that situation and that is all we are asking for.

Comm. Strickland: Would you be open to saying that these boards and commissions -- that the general services area would have their proportionate share within 10% or 5%.

Comm. Smith: I would certainly be open to that.

Chairman Ellis: I think we will take Mayor McDonald's recommendation and come up with some suggestions that might work with your thinking. Being at Bartlett yesterday for Comm. Orgel's task force, all of the chambers from the suburban communities were very nice to talk about economic development and one of the things they talked about with J.W. and myself is at times, Memphis has extended services right through a reserve area and I think that we need some guidance on what this planning aspect is.

What has gone into the reserve areas? It is my understanding that Germantown does not have a reserve area. If they have planning concerns -- we weren't going to address it, but we need to because we don't see any reserve areas. We need to understand what those planning concerns are in the reserve areas.

Mayor McDonald: Also in your presentation, Comm. Smith, under the department of metro transportation, where it talked about roads, etc., you did not specify on the PowerPoint whether that would be general or urban service. I would just caution you from our perspective, we would not want that to be a general service because we have our own planning departments, our own public works departments and we plan our own roads. I think that is where we come together with the MPO to have a general idea of how we work together. The intermodal committee task force for Mayor Ford met earlier today, so we work with the MPO on those kinds of things, but we have our own departments and we would want that to be an urban service with maybe some special in it where it applies. I can see where people like -- where communities like Lakeland might want that because they might not have their own, but at least three or four of the municipalities have their own.

Other Business

Comm. Fowlkes: Marketing and communications has come up a few times and how the commission is going to start conveying this message; There is so much involved when it comes to marketing effectively to the entire county; want to go ahead and start looking at budget and possibly spending some of those dollars to appropriately market. When I say marketing, I mean effective communication or an awareness campaign of what we are doing. We cannot spend budget to say that we are telling people to vote for or against anything, but disseminating the information. The commission has to look at methodology when it comes to marketing because there are a lot of people for this and a lot who are against it and how to reach the ears of the community and having the time, the ability and the expertise to convey the message. The commissioners can help with grass root things and doing little things, emails, reaching out to small organizations. Will need to look at things such as advertisements, signs, media, public relations, seeking to look at marketing firms, consultants who can get it done, get the information disseminated evenly. Want to look at earmarking funds, \$25,000 of budget, to start the process.

Comm. Burkins: Might be better to draw up budget and then ask Commission to approve with those suggestions made by Comm. Fowlkes.

Chairman Ellis: We have to write the charter and explain it. So as we do this and start making decisions, we are going to need someone to put it simply. Does not believe press releases will be effective.

Brian Kuhn: There is a specific statute in the metropolitan government that sets your budget at a maximum of \$50,000 and it says what you can use it for. You can use it basically to disseminate the information on the contents of the charter.

Comm. Smith believes can hire a local PR firm for less than \$25,000 that can basically print up a Cliff Notes version of the charter once written.

Chairman Ellis: Believes commission needs to start the process of communicating and educating the public on what the commission is doing. Need Comm. Fowlkes to go ahead and start talking to firms.

B. Kuhn: Cannot use funds for communicating what is being done in committees, but must wait until have at least some portion of a charter document. Will provide some guidance based on 1984 charter.

Comm. Strickland: Don't have to get bids on marketing plan, but wants proposals that are fiscally responsible.

Adjournment

5:58 p.m.